

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KENNETH BURKS,

Petitioner,

v.

Case No. 19-C-1675

WARDEN PAUL KEMPER,

Respondent.

ORDER

On November 13, 2019, Kenneth Burks filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court denied Petitioner's motion for leave to proceed without prepayment of the filing fee on January 13, 2020, and ordered Petitioner to pay the \$5.00 filing fee on or before February 6, 2020. On March 13, 2020, the court dismissed the action without prejudice due to Petitioner's failure to prosecute, as he had yet to pay the filing fee or advise why he was unable to do so. Dkt. No. 10. On April 27, 2020, Petitioner filed a motion to reopen the case, indicating that he lacked the funds to pay the filing fee. On April 29, 2020, the court granted the motion and screened the petition pursuant to Rule 4 of the Rules Governing § 2254 Cases.

The court noted that, in his state court proceedings, Petitioner raised two grounds for relief: (1) trial counsel provided ineffective assistance by failing to object to impermissible vouching by a detective and (2) trial counsel failed to object to the trial court's reliance on an impermissible sentencing factor, and that Petitioner appeared to have abandoned those grounds for relief and asserted in his petition that trial counsel was ineffective in failing to advise him of a plea deal offered by the state. The court determined that this new ground for relief had not been exhausted

at the state court level. Because it appeared that Petitioner has not exhausted his state court remedies for this claim, the court directed Petitioner to show cause on or before June 1, 2020, why this case should not be dismissed without prejudice. To date, Petitioner has not responded to the court's order to show cause. Petitioner has not established that he has provided the state courts a full and fair opportunity to address his claim of ineffective assistance by failing to convey the plea offer or that there exists cause and prejudice for his failure to do so. Accordingly, the petition is **DISMISSED without prejudice**. The Clerk is directed to enter judgment accordingly.

SO ORDERED at Green Bay, Wisconsin this 9th day of June, 2020.

s/ William C. Griesbach
William C. Griesbach, District Judge
United States District Court